

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Amendment of the Commission's Rules)	MB Docket No. 10-71
Related to Retransmission Consent)	
)	
)	

REPLY COMMENTS OF SPORTS FANS COALITION INC.

Sports Fans Coalition Inc. ("SFC") respectfully submits these reply comments in response to the Commission's March 3, 2011 Notice of Proposed Rulemaking regarding reforms to the retransmission consent process.¹

I. THE MIGRATION OF SPORTS PROGRAMMING FROM BROADCAST TO PAY-TV IS A PROBLEM WORTHY OF COMMISSION ATTENTION.

Sinclair Broadcast Group, Inc. ("Sinclair") argues in its comments that the migration of programming, such as sports, to pay-TV should be a greater concern than the periodic blacking out of events because when programming moves to pay-TV, it becomes permanently unavailable to over-the-air viewers, while a blackout during a retransmission consent dispute is only temporary.² Sinclair is partly right.

There is no doubt that the migration of sports programming away from free over-the-air broadcast to pay-TV is a problem for fans who cannot afford or do not want to pay a monthly fee

¹ Amendment of the Commission's Rules Related to Retransmission Consent, *Notice of Proposed Rulemaking*, 26 FCC Rcd. 2718 (2011) ("*Notice*").

² Sinclair at 14.

for cable or satellite. A fundamental shift in sports distribution occurred, for example, when Monday Night Football left broadcast network television for ESPN, reflecting a larger trend of fans having to pay more to see the games they love. Moreover, leagues now have their own channels, such as the NFL Network or YES Network, and have an incentive to distribute games only through their own proprietary platforms at the expense of free over-the-air broadcast.

SFC agrees with Sinclair and other broadcasters that this is a bad trend. Sports should be as widely available as possible, given that they are publicly financed through stadium subsidies and bolstered by federal anti-trust exemptions and other statutory and regulatory regimes.

SFC does not believe, however, that the deliberate blacking out of popular sports events through programming take-downs is an appropriate means for broadcasters to gain leverage and demand more revenue to pay for sports and other programming. Two wrongs do not make a right. Sports should not be blacked out for any reason, period. There must be a better way to ensure that some basic amount of sports programming remains on free broadcast television.

Broadcasters might argue, for example, that they must obtain higher retransmission consent rates in order to pay for sports rights and keep the games on free broadcast television. This may or may not be true, but the problem in that case is the confiscatory license fees sought by leagues. Broadcasters and all Americans should be offended by professional leagues that charge exorbitant licensing fees, only to be subsidized by taxpayers in furtherance of the act. Either the subsidies and legal protections for professional and collegiate sports should end or license fee inflation should stop, but to have both at the same time is foul ball.

In any event, the migration of sports to ever more expensive distribution platforms is wrong. Fighting the trend with increased blackouts of sports events during commercial disputes, however, is not the answer.

II. SPORTS FANS SHOULD NOT BE USED AS A TOOL IN RETRANSMISSION CONSENT DISPUTES.

SFC concurs with the University of Florida football fans who highlighted FOX Network's threats to deny Florida cable customers coverage of the Sugar Bowl.³ Gator Nation stated that there should be a more productive way to resolve disputes prior to a crisis "so that the public is not used as a tool."⁴ SFC agrees.

Although the best answer is a system of mandatory, binding arbitration with a stand-still to prevent programming take-downs, if the Commission does not believe it has the authority to do so, it should create as many disincentives as possible for taking down popular sports events. At the very least, the taking down of sports events during retransmission consent disputes should be deemed bad faith.

III. Conclusion

Sports fans, like other consumers, are harmed by programming take-downs during retransmission consent disputes. The Commission can and should promote the public interest by updating the retransmission consent rules and insulating sports programming from blackouts during retransmission consent disputes.

Respectfully submitted,

_____/s/_____

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³ Gator Nation at 1.

⁴ *Id.*